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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8647 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge 2, 3

KTRITBHAT MAGANBHAT PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

MR MUKESH D RAVAL for Petitioner

MS SHRADDHA TALATI . ADDL. GOVERNMENT PLEADER for Respondent No. 1, 2

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 29/12/98

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India, the detention order dated 20.6.1998 at Annexure 'A' passed by the Commissioner of Police, Ahmedabad city under section 3 (2) of the Prevention of Antisocial

Activities Act ('PASA') is under challenge with prayers that the said order be quashed through a writ of certiorari and through a writ of habeas corpus the petitioner be released immediately from illegal detention.

The brief facts giving rise to this petition are as follows :

The detaining authority considered 8 cases registered against the petitioner under section 379, IPC in which thefts of scooters and spare-parts of scooters were involved. The detaining authority further considered the statements of two confidential witnesses who narrated the incidents dated 21.2.1998 and 1.3.1998. These witnesses requested the detaining authority to keep their names and addresses secret on account of fear of the petitioner. Considering the aforesaid material, the detaining authority reached subjective satisfaction that the petitioner is a dangerous person within the meaning of section 2 (c) of PASA and his activities were prejudicial for maintenance of public order. Accordingly, the impugned order was passed.

The impugned order, in the course of arguments, has been challenged on two grounds. The first ground is that there was delay in passing the impugned order as computed from the last registered criminal case against the petitioner. Reference has been made to the case of Pradip Nilkanth vs. S. Ramamurthi, 1993 Supple. (2), SCC, 61. In my opinion, the contention has no substance nor verdict of the Supreme court in Pradip Nilkanth (supra) can be applied. The facts of the case before the Apex court were that the last offence against the petitioner was registered in January/ February 1991. Statements of witnesses relating to criminal cases were recorded in March 1991 and that too after release of the detenu on bail. The proposal was submitted by the sponsoring authority in April 1991 which was accepted by the detaining authority in July 1991 and detention order was passed in August 1991. The apex court found that on these facts, there was delay in passing the detention order, for over five months from the date of registration of the last case and over four months from the submission of the proposal. The delay remained unexplained, hence, the detention order was not sustained by the Apex court. The Apex court nowhere observed that in every case of delay from the date of registration of last offence that the detention order should be declared to be invalid. On the other hand, the Apex court in that case found that there was delay of more than five months from the date of

registration of last offence on the part of the sponsoring authority. The sponsoring authority submitted the proposal only after five months from the registration of the last offence. There was further delay of over four months from the submission of proposal by the sponsoring authority to the detaining authority and the detaining authority also remained silent for over four months .On these facts, the Apex court found that unexplained delay was fatal.

In the case before me, delay has been satisfactorily explained in the affidavit of the detaining authority. Para 9 of the counter-affidavit of the detaining authority shows that the petitioner was released on bail on 30.4.1998 with reference to the last offence registered against him on 7.3.1998. This was not the only case before the investigating agency that immediately witnesses could have been interrogated. Witnesses were interrogated on 15.6.1998 and 18.6.1998. Thus, delay between 30.4.1998 and 18.6.1998 is not to be explained by the detaining authority nor is to be explained by the police inspector who interrogated the witnesses in connection with registered criminal case. Submission of proposal by the sponsoring authority was made to the detaining authority on 19.6.1998. On 20.6.1998, the impugned order was passed and that too after the witnesses were called by the detaining authority and fear in the mind of the witnesses was personally examined and considered by the detaining authority . Thus, from the date of submission of proposal viz. 19.6.1998, there was only one day's delay inasmuch as the detention order was passed on 20.6.1998. Thus, on this ground, the detention order cannot be quashed.

The next ground has been that the activities of the petitioner cannot be said to be prejudicial for maintenance of public order. This contention implies that the subjective satisfaction of the detaining authority that the petitioner is a dangerous person is not under challenge. Moreover it could not have been challenged firstly because the grounds of detention show that as many as eight criminal cases under section 379, IPC for theft of scooters and spare-parts of scooters were registered against the petitioner between January 1998 and March 1998. The petitioner carried on criminal activities of this nature between two months. These are patently indicated in the grounds of detention . Offence punishable under section 379, IPC falls under Chapter XVI of the IPC . Consequently, on account of criminal offences against the petitioner punishable under chapter XVI of the I.P.C. he could be branded as a dangerous

person. In addition to this, two confidential witnesses have also stated about dangerous activities of the petitioner . On the basis of the aforesaid material, subjective satisfaction of the detaining authority that the petitioner is a dangerous person has been reached which does not require any interference inasmuch as it was based on proper appraisal of material on record.

Simply because the petitioner is a dangerous person within the meaning of section 2 (c) of the PASA,he cannot be preventively detained in view of section 3 (4) and explanation to sub-section (4) of section 3 of PASA . A dangerous person can be preventively detained provided his activities are prejudicial for maintenance of public order. If on the other hand, prejudicial activities of dangerous person disturbed only law and order ,then he can be booked under relevant provisions of IPC or special law like Arms Act etc.. For this, 8 offences registered against the petitioner can hardly be pressed in service for holding that the activities of the petitioner, in these cases, were prejudicial for maintenance of public order. The material disclosed is not enough to infer whether eight cases were registered on direct or circumstantial evidence against the petitioner. Further,there is no indication in the grounds of detention that while committing theft of scooters and spareparts of scooters on eight occasions, the petitioner created any situation which was prejudicial for maintenance of public order. Thus, these eight cases were hardly sufficient for reaching subjective satisfaction that the activities the petitioner were prejudicial for maintenance of public order.

Then remains the statements of two confidential witnesses. The first witness stated about the incident of 1.3.1998 when the petitioner asked the witness to keep his scooter at his place for a day.The witness refused to oblige the petitioner. The petitioner got excited and dragged the witness on road and beat him. People in the vicinity assembled. The petitioner rushed towards them showing open razor and touched them with razor and also threatened them. According to this witness, the people fled away here and there and atmosphere of danger prevailed in the locality. This situation, to my mind, does not travel beyond the situation prejudicial for maintenance of law and order. It is not indicated in this statement that the witness suspected that the scooter which was to be kept with him was a stolen scooter .There was no indication that the witness was touched with the knife or that any injury was caused to him.There was no reason for the petitioner to run with open razor towards members of public and razor was

touched to them. It also appears that razor was only touched on the person of the people. In any event, taking the face value of the statement, it is difficult to conclude that such activity was prejudicial for maintenance of public order.

The second witness likewise stated about the incident of 21.2.1998 when the petitioner approached him and offered him to purchase a spare wheel of scooter. The witness refused to purchase it suspecting it to be stolen. The witness was dragged by the petitioner and he was beaten. Again, people assembled. They were threatened with knife. Knife was touched on the members of public.. Again atmosphere of danger prevailed. This incident is no more improvement over the incident narrated by the first witness and this incident also did not create any situation in which even tempo of life of community was likely to be disturbed or was actually disturbed. The activities were absolutely insufficient to create adverse effect on the peace and tranquility of the area. Consequently, from these two statements also, it cannot be said that the activities of the petitioner were prejudicial for maintenance of public order.

Since basic requirement for passing preventive detention against the petitioner viz. existence of activities prejudicial for maintenance of public order is lacking in the instant case, the impugned detention order cannot be sustained. It is rendered illegal. The writ petition, therefore, succeeds and is hereby allowed. The impugned detention order dated 20.6.198 at Annexure 'A' is quashed. The petitioner shall be released forthwith unless wanted in some other case.

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